

By: Nelson
(King of Taylor)

S.B. No. 1058

Substitute the following for S.B. No. 1058:

By: Kolkhorst

C.S.S.B. No. 1058

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the practice of nursing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 301.004, Occupations Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) gratuitous nursing care of the sick that is provided by a friend;

(2) nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if the person providing the care does not hold the person out as a nurse unless the person is licensed in another state;

(3) nursing care in which treatment is solely by prayer or spiritual means;

(4) an act performed by a person under the delegated authority of a person licensed by the Texas Medical Board;

(5) an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed except that if the person also holds a license under this chapter and the act is within the practice of nursing, the board may take action against that license based on that act;

(6) the practice of nursing that is incidental to a program of study by a student enrolled in a nursing education

1 program approved under Section 301.157(d) leading to an initial
2 license as a nurse; or

3 (7) the practice of nursing by a person licensed in
4 another state who is in this state on a nonroutine basis for a
5 period not to exceed 72 hours to:

6 (A) provide care to a patient being transported
7 into, out of, or through this state;

8 (B) provide nursing consulting services; or

9 (C) attend or present a continuing nursing
10 education program.

11 SECTION 2. Subchapter D, Chapter 301, Occupations Code, is
12 amended by adding Section 301.1546 to read as follows:

13 Sec. 301.1546. RULES REGARDING PAIN MANAGEMENT. The board
14 shall adopt rules regarding the provision of pain management
15 services by advanced practice nurses.

16 SECTION 3. Subsection (c), Section 301.2511, Occupations
17 Code, is amended to read as follows:

18 (c) The board by rule shall ~~[may]~~ develop a system for
19 ~~[initiating the process of]~~ obtaining criminal history record
20 information for a person accepted for enrollment in a nursing
21 ~~[applicants for a license under this chapter by requiring persons~~
22 ~~who enroll or plan to enroll in an]~~ educational program that
23 prepares the ~~[a]~~ person for initial licensure ~~[a license]~~ as a
24 registered or vocational nurse by requiring the person to submit to
25 the board a set of fingerprints that meets the requirements of
26 Subsection (a). The board may develop a similar system for an
27 applicant for enrollment in a nursing educational program. The

1 board may require payment of a fee by a person who is required to
2 submit a set of fingerprints under this subsection.

3 SECTION 4. Section 301.257, Occupations Code, is amended by
4 adding Subsections (j) and (k) to read as follows:

5 (j) The board may file a petition under this section based
6 on the results of a criminal history record information check
7 conducted under Section 301.2511. The board by rule shall adopt
8 requirements for the petition and determination under this
9 subsection. The rules must:

10 (1) identify the criminal offenses that constitute
11 grounds for the board to file the petition; and

12 (2) describe the documents required by the board to
13 make a determination of license eligibility.

14 (k) The board shall make a determination of license
15 eligibility under Subsection (j) not later than the 120th day after
16 the date the person submits the required documents to the board
17 under that subsection.

18 SECTION 5. Subchapter G, Chapter 301, Occupations Code, is
19 amended by adding Sections 301.305 and 301.307 to read as follows:

20 Sec. 301.305. CONTINUING EDUCATION IN NURSING
21 JURISPRUDENCE AND NURSING ETHICS. (a) As part of a continuing
22 competency program under Section 301.303, a license holder shall
23 complete at least two hours of continuing education relating to
24 nursing jurisprudence and nursing ethics before the end of every
25 third two-year licensing period.

26 (b) The board shall adopt rules implementing the
27 requirement under Subsection (a) in accordance with the guidelines

1 for targeted continuing education under Section 301.303(g).

2 (c) The board may not require a license holder to complete
3 more than four hours of continuing education under this section.

4 Sec. 301.307. CONTINUING EDUCATION IN OLDER ADULT OR
5 GERIATRIC CARE. (a) As part of a continuing competency program
6 under Section 301.303, a license holder whose practice includes
7 older adult or geriatric populations shall complete at least two
8 hours of continuing education relating to older adult or geriatric
9 populations or maintain certification in an area of practice
10 relating to older adult or geriatric populations.

11 (b) The board shall adopt rules implementing the
12 requirement under Subsection (a) in accordance with the guidelines
13 for targeted continuing education under Section 301.303(g).

14 (c) The board may not require a license holder to complete
15 more than six hours of continuing education under this section.

16 SECTION 6. Subsection (b), Section 301.452, Occupations
17 Code, is amended to read as follows:

18 (b) A person is subject to denial of a license or to
19 disciplinary action under this subchapter for:

20 (1) a violation of this chapter, a rule or regulation
21 not inconsistent with this chapter, or an order issued under this
22 chapter;

23 (2) fraud or deceit in procuring or attempting to
24 procure a license to practice professional nursing or vocational
25 nursing;

26 (3) a conviction for, or placement on deferred
27 adjudication community supervision or deferred disposition for, a

1 felony or for a misdemeanor involving moral turpitude;

2 (4) conduct that results in the revocation of
3 probation imposed because of conviction for a felony or for a
4 misdemeanor involving moral turpitude;

5 (5) use of a nursing license, diploma, or permit, or
6 the transcript of such a document, that has been fraudulently
7 purchased, issued, counterfeited, or materially altered;

8 (6) impersonating or acting as a proxy for another
9 person in the licensing examination required under Section 301.253
10 or 301.255;

11 (7) directly or indirectly aiding or abetting an
12 unlicensed person in connection with the unauthorized practice of
13 nursing;

14 (8) revocation, suspension, or denial of, or any other
15 action relating to, the person's license or privilege to practice
16 nursing in another jurisdiction or under federal law;

17 (9) intemperate use of alcohol or drugs that the board
18 determines endangers or could endanger a patient;

19 (10) unprofessional or dishonorable conduct that, in
20 the board's opinion, is likely to deceive, defraud, or injure a
21 patient or the public;

22 (11) adjudication of mental incompetency;

23 (12) lack of fitness to practice because of a mental or
24 physical health condition that could result in injury to a patient
25 or the public; or

26 (13) failure to care adequately for a patient or to
27 conform to the minimum standards of acceptable nursing practice in

1 a manner that, in the board's opinion, exposes a patient or other
2 person unnecessarily to risk of harm.

3 SECTION 7. Subsection (b), Section 301.453, Occupations
4 Code, is amended to read as follows:

5 (b) In addition to or instead of an action under Subsection
6 (a), the board, by order, may require the person to:

7 (1) submit to care, counseling, or treatment by a
8 health provider designated by the board as a condition for the
9 issuance or renewal of a license;

10 (2) participate in a program of education or
11 counseling prescribed by the board, including a program of remedial
12 education;

13 (3) practice for a specified period under the
14 direction of a registered nurse or vocational nurse designated by
15 the board; ~~or~~

16 (4) perform public service the board considers
17 appropriate; or

18 (5) abstain from the consumption of alcohol or the use
19 of drugs and submit to random periodic screening for alcohol or drug
20 use.

21 SECTION 8. Subsection (a), Section 301.454, Occupations
22 Code, is amended to read as follows:

23 (a) Except in the case of a temporary suspension authorized
24 under Section 301.455 or 301.4551 or an action taken in accordance
25 with an agreement between the board and a license holder, the board
26 may not take any ~~initiate a~~ disciplinary action relating to a
27 license unless:

1 (1) the board has served notice to the license holder
2 of the facts or conduct alleged to warrant the intended action; and

3 (2) the license holder has been given an opportunity,
4 in writing or through an informal meeting, to show compliance with
5 all requirements of law for the retention of the license.

6 SECTION 9. Subsection (a), Section 301.458, Occupations
7 Code, is amended to read as follows:

8 (a) Unless there is an agreed disposition of the complaint
9 under Section 301.463, ~~[and]~~ if probable cause is found under
10 Section 301.457(e)(2), the board or the board's authorized
11 representative shall file ~~[initiate proceedings by filing]~~ formal
12 charges against the nurse.

13 SECTION 10. Subsection (a), Section 301.465, Occupations
14 Code, is amended to read as follows:

15 (a) Notwithstanding Section 2001.089, Government Code, the
16 ~~[The]~~ board may request issuance of a subpoena to be served in any
17 manner authorized by law, including personal service by a board
18 investigator or ~~[and service]~~ by certified mail.

19 SECTION 11. Section 301.466, Occupations Code, is amended
20 by amending Subsection (a) and adding Subsection (d) to read as
21 follows:

22 (a) A complaint and investigation concerning a nurse under
23 this subchapter, ~~[and]~~ all information and material compiled by the
24 board in connection with the complaint and investigation, and the
25 information described by Subsection (d) are:

26 (1) confidential and not subject to disclosure under
27 Chapter 552, Government Code; and

1 (2) not subject to disclosure, discovery, subpoena, or
2 other means of legal compulsion for release to anyone other than the
3 board or a board employee or agent involved in license holder
4 discipline.

5 (d) Notwithstanding Subsection (c), if the board orders a
6 nurse to participate in a peer assistance program approved by the
7 board under Section 467.003, Health and Safety Code, the complaint,
8 filing of formal charges, nature of those charges, final board
9 order, and disciplinary proceedings are subject to disclosure:

10 (1) only to the same extent as information regarding a
11 complaint is subject to disclosure under Subsection (b); or

12 (2) in a subsequent matter relating to the board order
13 or a subsequent violation of this chapter or a board rule.

14 SECTION 12. The heading to Subchapter N, Chapter 301,
15 Occupations Code, is amended to read as follows:

16 SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING AND DEFERRED ACTION

17 SECTION 13. Section 301.651, Occupations Code, is amended
18 to read as follows:

19 Sec. 301.651. DEFINITIONS [~~DEFINITION~~]. In this
20 subchapter:

21 (1) "Corrective [~~,"corrective]~~ action" means a fine or
22 remedial education imposed under Section 301.652.

23 (2) "Deferred action" means an action against a person
24 licensed or regulated under this chapter that is deferred by the
25 board as provided by this subchapter.

26 SECTION 14. Subsection (b), Section 301.655, Occupations
27 Code, is amended to read as follows:

1 (b) If the person does not accept the executive director's
2 determination and recommended corrective action as originally
3 proposed or as modified by the board or fails to respond in a timely
4 manner to the executive director's notice as provided by Section
5 301.654, the executive director shall:

6 (1) terminate corrective action proceedings [~~under~~
7 ~~this subchapter~~]; and

8 (2) dispose of the matter as a complaint under
9 Subchapter J.

10 SECTION 15. Subchapter N, Chapter 301, Occupations Code, is
11 amended by adding Section 301.6555 to read as follows:

12 Sec. 301.6555. DEFERRED ACTION. (a) For any action or
13 complaint for which the board proposes to impose on a person a
14 sanction other than a reprimand or a denial, suspension, or
15 revocation of a license, the board may:

16 (1) defer the final action the board has proposed if
17 the person conforms to conditions imposed by the board, including
18 any condition the board could impose as a condition of probation
19 under Section 301.468; and

20 (2) if the person successfully meets the imposed
21 conditions, dismiss the complaint.

22 (b) Except as provided by this subsection, a deferred action
23 by the board is not confidential and is subject to disclosure in
24 accordance with Chapter 552, Government Code. If the person
25 successfully meets the conditions imposed by the board in deferring
26 final action and the board dismisses the action or complaint, the
27 deferred action of the board is confidential to the same extent as a

1 complaint is confidential under Section 301.466.

2 SECTION 16. Section 301.656, Occupations Code, is amended
3 to read as follows:

4 Sec. 301.656. REPORT TO BOARD. The executive director
5 shall report periodically to the board on the corrective or
6 deferred actions imposed under this subchapter, including:

7 (1) the number of [~~corrective~~] actions imposed; and

8 (2) the types of violations for which [~~corrective~~]
9 actions were imposed[~~, and~~

10 [~~(3) whether affected nurses accepted the corrective~~
11 ~~actions~~].

12 SECTION 17. Section 301.657, Occupations Code, is amended
13 to read as follows:

14 Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE OR
15 DEFERRED ACTION. (a) Except to the extent provided by this
16 section, a person's acceptance of a corrective or deferred action
17 under this subchapter does not constitute an admission of a
18 violation but does constitute a plea of nolo contendere.

19 (b) The board may treat a person's acceptance of corrective
20 or deferred action as an admission of a violation if the board
21 imposes a sanction on the person for a subsequent violation of this
22 chapter or a rule or order adopted under this chapter.

23 (c) The board may consider a corrective or deferred action
24 taken against a person to be a prior disciplinary action under this
25 chapter when imposing a sanction on the person for a subsequent
26 violation of this chapter or a rule or order adopted under this
27 chapter.

1 SECTION 18. Section 301.1607, Occupations Code, is
2 repealed.

3 SECTION 19. (a) Except as provided by Subsection (b) of
4 this section, the changes in law made by this Act to Chapter 301,
5 Occupations Code, apply only to a violation that occurs on or after
6 the effective date of this Act. A violation that occurs before that
7 date is governed by the law in effect on the date the violation
8 occurred, and the former law is continued in effect for that
9 purpose.

10 (b) The changes in law made by this Act to Subchapter N,
11 Chapter 301, Occupations Code, apply to a violation that occurs
12 before, on, or after the effective date of this Act.

13 (c) Sections 301.305 and 301.307, Occupations Code, as
14 added by this Act, apply only to a licensing period that begins on
15 or after January 1, 2014.

16 SECTION 20. This Act takes effect September 1, 2013.